IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 806 of 2007()

ST.221/2004 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOCHI

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PETITIONER: ACCUSED

SAJI, PROPRIETOR,
M/S.AISWARYA TRADERS, NEAR POLICE STATION,
KURAVILANGADU, KOTTAYAM-33.

BY ADV. SRI.S.ANANTHAKRISHNAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. REGENCY CERAMIC LIMITED,
REP.BY PHILIP KURIVILLA, SENIOR REGIONAL MANAGER,
1203/A/50, A 1 ELFANS BUILDING,
EDAPPALLY RAILWAY STATION ROAD, EDAPPALLY,
ELAMAKKARA P.O., COCHIN-26.

BY P.P.ADV.SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.806 of 2007

Dated this the 21st day of March, 2007

ORDER

The petitioner is the accused in a prosecution under Section 138 of the N.I Act. Signature in the cheque does not appear to be disputed and the contention is that a blank signed cheque available with the complainant has been misutilised by the complainant.

2. A contention was raised in the course of the trial that the notice of demand under Section 138 of the N.I Act has not been duly served on the petitioner. An acknowledgment card was produced by the complainant. The petitioner took the stand that the signature in the said acknowledgment card is not that of the petitioner. The petitioner, at the stage of the defence, wanted the said acknowledgment card to be sent to the expert. The said application appears to have been opposed and the learned Magistrate by the impugned order, a copy of which is produced as Annexure-A7, rejected the said prayer. In fact the order is that the Crl.M.P is closed subject to the observation that, if necessary, the acknowledgment card will be sent to the expert.

3. I am called upon to invoke the jurisdiction under Section 482 Cr.P.C. This is an extraordinary inherent jurisdiction. The same is not to be invoked as a matter of course. Exceptional and

compelling reasons must be shown to exist to justify the invocation of such powers against an interlocutory order. The law frowns upon challenge against interlocutory orders. That attitude of the law is reflected eminently in Section 397(2) Cr.P.C. Ordinarily and normally, such interlocutory orders must wait for their challenge along with final order which is to be passed by the courts in the cases concerned. On the exceptional facts of a given case, if the conscience of a court is satisfied that there is failure of justice resulting from any such interlocutory orders, certainly inherent powers can be invoked in aid of justice.

4. I shall not encumber the records with any specific observation on facts. The learned counsel for the petitioner has brought to my notice the decision in **Kalyani Baskar v. M.S.Sampoornam** [(2007) 2 SCC 258] and the decision in **Bindu v. Sreekantan Nair** [2007(1) KLT 525]. I am unable to agree that failure of justice which should prompt the Court to invoke the powers under Section 482 Cr.P.C has occurred in the facts and circumstances of this case. Suffice it to say that I am not satisfied that this is a fit case, where such extraordinary inherent powers can or ought to be invoked.

5. This Crl.M.C is, in these circumstances, dismissed. I may however hasten to observe that the option of the petitioner to challenge the impugned order, if necessary, along with the final orders to be passed in S.T.No.221 of 2004 shall remain absolutely unfettered by the dismissal of this Crl.M.C.

(R.BASANT, JUDGE)

rtr/-